

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	
	)	OAH No. 12-0213-CMB
B H	)	Agency No.
_____	)	

**REVISED DECISION**

**I. Introduction**

B H applied for Adult Public Assistance (APA) and Interim Assistance benefits in March of 2012. She applied for Food Stamp and Medicaid benefits in July of 2012. The Division of Public Assistance (division) denied her applications. Ms. H submitted a request for a hearing on the following programs: Food Stamps; Medicaid; CAMA; General Relief Assistance; Adult Public Assistance; and Interim Assistance.

A hearing was held on August 30, 2012. At that time, Ms. H withdrew her request for a hearing on the Food Stamps benefits as the division had previously restored those benefits to the amount that was provided prior to the adverse action.

After taking evidence, the hearing was continued, and a supplemental hearing was held on September 14, 2012. A proposed decision was issued on September 24, 2012. The division filed its proposal for action, noting areas in which it disagreed. Pursuant to AS 44.64.060(e) and my independent review of the testimony and written exhibits, this revised decision is issued.

**Facts**

**A. Procedural History**

Ms. H has a history of requesting public assistance benefits dating back to 1992. Those benefits include General Relief, Food Stamps, Medicaid, and APA/Interim Assistance. She has at least three separate division case numbers, A, B, and C.<sup>1</sup>

Ms. H applied for APA benefits on March 21, 2012 (division case no. D).<sup>2</sup> The division denied her application on April 27, 2012.<sup>3</sup>

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<sup>1</sup> Page 14. The first set of documents submitted by the division was not marked with identifying exhibit numbers. The documents submitted by Ms. H had numbered tabs on them, but each individual page was not marked. To make it easier to identify documents in the record, these two sets of documents have been numbered sequentially from 1 to 209. These documents are referred to by their page number. Another set of documents subsequently submitted by the division were marked as exhibits, and are referred to by their exhibit number.

Ms. H is also a Food Stamp benefit recipient. She applied to renew those benefits on July 5, 2012.<sup>4</sup> The division treated that application as an application for both Food Stamps and Medicaid benefits and on July 6, 2012 approved her for Food Stamps, albeit at a reduced amount. The division also approved her son, but not her, for Medicaid benefits (division case no. A).<sup>5</sup> The July 6, 2012 notice does not contain any statement or authority from the division explaining why Medicaid was denied for Ms. H.<sup>6</sup>

Ms. H requested a fair hearing on July 20, 2012 regarding Food Stamps, Medicaid, CAMA, General Relief Assistance, APA, and Interim Assistance.<sup>7</sup>

The division filed two motions to dismiss all of Ms. H's hearing requests. A ruling was deferred on that request until the hearing date to allow Ms. H an opportunity to respond to the division's motions.

The Food Stamp issue was resolved prior to the hearing when the division recalculated and increased the amount of her benefits.<sup>8</sup> This left the initial issue of whether Ms. H's hearing should proceed with regard to Medicaid, CAMA, General Relief, APA, and Interim Assistance.

### ***B. Disputed Facts – CAMA and General Relief***

The agency asserted that Ms. H had never applied for CAMA and General Relief. Ms. H testified that she applied for both of these programs.

## **III. Discussion**

### ***A. Issues Presented***

Ms. H's hearing request asked for a review of the division's decision on her applications for Food Stamps, Medicaid, CAMA, General Relief, APA, and Interim Assistance. Ms. H believes she applied for all of these benefits. The division has asserted that Ms. H only applied for Food Stamps, Medicaid, APA,<sup>9</sup> and Interim Assistance. The division asserts that the hearing request for CAMA and General Relief should be denied

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<sup>2</sup> Exhibit 2.0.

<sup>3</sup> Page 15.

<sup>4</sup> Exhibit 1.0.

<sup>5</sup> Page 11.

<sup>6</sup> Page 11.

<sup>7</sup> Page 30.

<sup>8</sup> Ms. H orally withdrew her request for a hearing. 2 AAC 64.230(a).

<sup>9</sup> In its motion to dismiss, the division asserted that it had no record of an application for APA. However, it produced with its position statement a copy of a notice denying this benefit (page 15) and the supplemental materials provided after the first hearing included a copy of the application. Exhibit 2.0.

because Ms. H did not apply for those benefits. The division asserts that the appeal of the Interim Assistance and APA denials should be dismissed as untimely. Finally, the division asserts that the Medicaid denial should be upheld because Ms. H failed to cooperate with the Child Support Services Division.

The parties agree that Food Stamp benefits are no longer at issue.

***B. CAMA and General Relief Benefits***

The division moved to deny a hearing on the CAMA and General Relief benefits because Ms. H never applied for them.<sup>10</sup> CAMA provides payment for medical treatment for certain specified medical conditions.<sup>11</sup> The record contains an Eligibility Review Form for Food Stamp benefits dated July 5, 2012.<sup>12</sup> The division stated that this form is also used for Medicaid eligibility. The top of the form contains a list of programs and the instruction to “Check Box for All Programs Due for Review.” CAMA and General Relief are not included in the list of programs that could be reviewed through this form.

The record contains an application dated March 21, 2012.<sup>13</sup> This application can be used to apply for a variety of programs. Only the APA program is checked on this form. CAMA and General Relief are not checked as being applied for.

The record also includes an application for Medicaid dated December 2, 2011.<sup>14</sup> CAMA and General Relief are not checked as being applied for on this form. The division’s records show no application by H for either CAMA or General Relief.

Ms. H testified that she applied for every type of benefit she could, and the division has acknowledged that it has another file for Ms. H which it has been unable to locate. Ms. H’ testimony, however, was somewhat vague on the issue of which programs she actually applied for. Based on my review of the evidence, I find by a preponderance of the evidence that Ms. H did not submit an application for either CAMA or General Relief benefits.<sup>15</sup> Because Ms. H did not apply for those benefits, she is not entitled to a hearing on whether

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<sup>10</sup> Page 3.

<sup>11</sup> 7 AAC 48.500.

<sup>12</sup> Exhibit 1.0.

<sup>13</sup> Exhibit 2.0.

<sup>14</sup> Exhibit 3.0.

<sup>15</sup> Pursuant to AS 44.64.060(e)(4), the ALJ’s factual findings on this issue are rejected because I place greater weight on the fact that none of the applications show a check mark next to these benefits, and less weight on Ms. H’ testimony that she did apply for these benefits.

she should have received them.<sup>16</sup> Ms. H can apply for these benefits and this decision in no way prejudices the review of her eligibility on any new application for benefits.

**C. Interim Assistance and Adult Public Assistance**

The division moved to dismiss Ms. H's hearing on the Interim Assistance and APA because her request was untimely. Ms. H's application was denied on April 27, 2012.<sup>17</sup> Her request for a hearing is dated July 20, 2012.<sup>18</sup>

An applicant is only entitled to a hearing if he or she requests one within 30 days of the date of receipt of the notice.<sup>19</sup> The division presented no direct evidence that Ms. H received this notice. It did, however, present evidence that the notice was mailed to Ms. H's general delivery address. Although there appears to be no Alaska court ruling on point, many courts apply a rebuttable presumption that a notice that was mailed and not returned as undeliverable was received within no more than seven days of the date of mailing.<sup>20</sup> That same presumption should be applied in Alaska hearings under 7 AAC 49, and it is presumed that Ms. H received the notice seven days after it was mailed.<sup>21</sup>

While there is a presumption that Ms. H received the notice, the presumption is rebuttable. Ms. H testified that she was homeless during that time period and experienced difficulties in receiving her mail. She testified credibly that she was not aware of her right to request a hearing until she received the notice concerning her food stamp recertification. Because her explanation is believable, it is more likely true than not true that Ms. H did not receive the notice denying her APA application. The division's motion to dismiss the hearing on these two benefits is denied. Accordingly, the merits of Ms. H's appeal of the division's determination will be considered.

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<sup>16</sup> 7 AAC 47.020 (GRE benefits may only be granted based on application); 7 AAC 48.030 (CAMA benefits may be denied for failing to complete application).

<sup>17</sup> Page 15.

<sup>18</sup> Page 5.

<sup>19</sup> 7 AAC 49.040. The division's policy manual states that the request must be made "within 30 days from the date the agency sent a correct notice of adverse action." Page 19. The manual incorrectly states the requirements of 7 AAC 49.040.

<sup>20</sup> *Francis v. Wing*, 694 N.Y.S.2d 29, 30 (1999); *Carter v. Review Bd of Indiana*, (526 N.E.2d 717, 718 – 719 (Indiana Ct. of Appeals, 1<sup>st</sup> Dist 1988)); *Ocasio v. Fashion Inst. of Tech.*, 9 Fed. Appx. 66, 68 (2nd Cir. 2001); *Seitzinger v. Reading Hosp. & Med. Ctr.*, 165 F.3d 236, 239 (3rd Cir. 1999); *Morgan v. Potter*, 489 F.3d 195, 196 (5th Cir. 2007); *Martin v. Alamo Cmty. Coll. Dist.*, 353 F.3d 409, 411 (5th Cir. 2003); *Coen v. Riverside Hosp.*, 2 Fed. Appx. 449, 450-51 (6th Cir. 2001); *Loyd v. Sullivan*, 882 F.2d 218, 218 (7th Cir. 1989); *Lozano v. Ashcroft*, 258 F.3d 1160, 1167 (10th Cir. 2001); *Legille v. Tegtmeyer*, 382 F.Supp. 166, 169 (D.D.C. 1974).

<sup>21</sup> Ms. H was not living in a remote location where mail delivery might routinely take longer than seven days.

The division denied the application because it had not received certain documents from Ms. H. These were:

1. The preliminary exam for interim assistance form completed by your doctor.
2. An authorization for release of protected health information form for each doctor that has treated you for your disability.
3. The disability & vocational report completed by yourself.<sup>[22]</sup>

The first form was received by the division on the same day it issued its denial notice.<sup>23</sup> There is no evidence in the record that the division received the other requested documents. Ms. H has not met her burden of proving that she did provide these documents to the division.<sup>24</sup> Accordingly, the division properly denied her application.<sup>25</sup>

#### ***D. Medicaid***

Ms. H applied for Medicaid on July 5, 2012.<sup>26</sup> The division found that her son, T, was eligible for Medicaid, but she was not.<sup>27</sup> The denial notice does not explain that Ms. H was denied. However, at the hearing, the division stated that the reason Ms. H was not eligible was because she did not provide the Child Support Information form she was asked to provide. That form is in the record at pages 47 – 56. It is undisputed that Ms. H decided not to provide the completed form to the division.

A person applying for Medicaid who is the parent of a child in his or her care is generally required to cooperate with the Child Support Services Division (CSSD).<sup>28</sup> Cooperation is defined by regulation, and includes “completing and signing the child support services agency’s child support information form[.]”<sup>29</sup> None of the exceptions for when this cooperation is required apply to Ms. H,<sup>30</sup> nor did she establish good cause for

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<sup>22</sup> Page 15 (font changed from all capitals to improve readability).

<sup>23</sup> Exhibit 6.0.

<sup>24</sup> Ms. H was also applying for Social Security Disability at about this same time. To the extent she testified that she thought she had provided releases, those may have been provided to the Social Security Administration rather than the division.

<sup>25</sup> Ms. H has the right to reapply for these benefits and any other benefits for which she may be eligible.

<sup>26</sup> Exhibit 1.0.

<sup>27</sup> Page 11.

<sup>28</sup> 7 AAC 100.042(a).

<sup>29</sup> 7 AAC 100.042(d)(4).

<sup>30</sup> See 7 AAC 100.042(b) (categories of individuals not required to cooperate).

failing to cooperate.<sup>31</sup> Because she refused to cooperate with CSSD without good cause, the division was correct to deny her Medicaid application.<sup>32</sup>

#### **IV. Conclusion**

Ms. H did not apply for General Relief or CAMA benefits, and thus is not entitled to receive those benefits. Ms. H did apply for APA, Interim Assistance, and Medicaid. The division properly denied her APA and Interim Assistance applications for failing to provide all of the requested documentation. The division properly denied her Medicaid application for failing to cooperate with the Child Support Services Division.

**The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e), as the final administrative determination in this matter.**

**Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.**

Dated this 15<sup>th</sup> day of November, 2012.

*Signed* \_\_\_\_\_  
Ree Sailors,  
Deputy Commissioner

[This document has been modified to conform to the technical standards for publication.]

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<sup>31</sup> See 7 AAC 100.044 (good cause for refusal to cooperate).

<sup>32</sup> 7 AAC 100.046(a).